

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
Petition of Medversant Technologies, LLC for Retroactive)	CG Docket No. 02-278
Waiver of 47 C.F.R. § 64.1200(a)(4)(iv))	
)	CG Docket No. 05-338
)	

PETITION FOR WAIVER

Medversant Technologies, LLC (“Medversant”), through counsel, hereby requests waiver of Section 64.1200(a)(4)(iv) of the Commission’s rules, 47 C.F.R. § 64.1200(a)(4)(iv), with respect to any faxes sent by it prior to April 30, 2015, without the opt-out notices required by that rule to recipients that had provided prior express invitation or permission. The Commission recently granted a number of such waivers and invited similarly situated parties to file requests for the same relief.¹ Medversant is a similarly situated party, and good cause exists for providing it a waiver.

Background

The Telephone Consumer Protection Act (TCPA) prohibits the use of a fax machine to send an “*unsolicited* advertisement.”² Specifically, in 2005, Congress enacted the Junk Fax Prevention Act as an amendment to the TCPA to “require[] the sender of an *unsolicited* fax advertisement to provide specified notice and contact information on the fax that allows recipients to ‘opt out’ of any future fax transmissions from the sender.”³ The Commission subsequently issued a rule providing that a fax advertisement “sent to a recipient that has provided prior express invitation or permission to the sender must include an opt-out notice.”

¹ *Petition for Declaratory Ruling, Waiver, and/or Rulemaking Regarding the Commission's Opt-Out Requirement for Faxes Sent with the Recipient's Prior Express Permission*, CG Docket No. 02-278, 05-338, Order, FCC 14-164, ¶¶ 22-31 (rel. Oct. 30, 2014) (“*Fax Order*”).

² 47 U.S.C. § 227(b)(1)(C) (emphasis added).

³ *Fax Order* ¶ 5 (emphasis added).

However, when issuing that rule, the Commission stated that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements.”⁴

Medversant—a leader in technology solutions for the management of healthcare provider data—provides credentialing services, and also offers communication compliance solutions to help healthcare providers meet their information security obligations under the Health Information Portability and Accountability Act. As part of its core credentialing business, Medversant communicates and exchanges valuable information directly with healthcare providers, including by facsimile. Medversant did not believe that these solicited facsimiles required opt-out notices. Medversant is not in the advertising industry and is not in the business of sending bulk faxes or junk faxes. Nonetheless, Medversant is currently defending itself against at least one, and possibly two, putative class actions in which the plaintiffs contend that the lack of opt-out notices on solicited facsimiles violated the TCPA and seek statutory damages.⁵

In its recently issued *Fax Order*, the Commission stated that its rules require that “senders of fax ads. . . include certain information on the fax that will allow consumers to opt out, even if they previously agreed to receive fax ads from such senders.”⁶ However, the Commission “recognize[d] that some parties who have sent fax ads with the recipient’s prior express permission may have reasonably been uncertain about whether [the Commission’s] requirement[s] for opt-out notices applied to them.”⁷ The Commission accordingly “grant[ed] retroactive waivers of [its] opt-out requirement to certain fax advertisement senders to provide

⁴ *Fax Order* ¶ 24 (quoting *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, Junk Fax Prevention Act of 2005*, CG Docket Nos. 02-278, 05-338, Report and Order and Third Order on Reconsideration, 21 FCC Rcd 3787, 3810 n.154 (2006) (“*Junk Fax Order*”)) (emphasis in original).

⁵ *Edward Simon, DC v. Healthways, Inc., et al.*, No. 2:14-08022 BRO (JCx) (C.D. Cal., filed September 16, 2014); *Affiliated Health Care Associates, P.C. v. Medversant Technologies, LLC, et al.* No. 1:14-10247 (N.D. Ill., filed December 22, 2014).

⁶ *Fax Order* ¶ 1.

⁷ *Id.*

these parties with temporary relief from any past obligation to provide the opt-out notice to such recipients required by [its] rules.”⁸ The Commission invited “[o]ther, similarly situated entities [to] request retroactive waivers from the Commission, as well.”⁹

Medversant Should Be Granted A Waiver

Medversant respectfully requests that the Commission grant it the same waiver that the Commission granted to the parties in the *Fax Order*. As the Commission has explained, it may grant a waiver where “(1) special circumstances warrant a deviation from the general rule and (2) the waiver would better serve the public interest than would application of the rule.”¹⁰ Medversant is entitled to a waiver under this standard, for the same reasons the parties granted waivers in the *Fax Order* received them.

First, there are “special circumstances” that “warrant deviation from the general rule” here, in that there are “two grounds that . . . led to confusion among affected parties (or misplaced confidence that the opt-out notice rule did not apply to fax ads sent with the prior express permission of the recipient).”¹¹ Specifically, the Commission noted that its order accompanying the opt-out notice regulation stated that “the opt-out notice requirement only applies to communications that constitute *unsolicited* advertisements” and that the notice of proposed rulemaking issued in advance of that regulation “did not make explicit that the Commission contemplated an opt-out requirement on fax ads sent with the prior express

⁸ *Id.*

⁹ *Id.* ¶ 22.

¹⁰ *Id.* ¶ 23; see 47 C.F.R. § 1.3; see also, e.g., *In the Matter of Coalition of E-Reader Manufacturers' Petition for Class Waiver of Sections 716 and 717 of the Communications Act and Part 14 of the Commission's Rules Requiring Access to Advanced Communications Services (ACS) and Equipment by People with Disabilities*, Order, CG Docket No. 10-213, DA 14-95 (rel. Jan. 28, 2014) (granting a waiver from the Commission's advanced communications services accessibility rules to a class of e-readers for a limited period of time where it would not be contrary to the public interest); *In the Matter of Cargo Airline Association Petition for Expedited Declaratory Ruling*, Order, CG Docket No. 02-278, FCC 14-32 (rel. March 27, 2014) (finding good cause to waive the requirements contained in Section 64.1200(a)(1)(iii) of the TCPA for package delivery companies to alert consumers about their packages).

¹¹ *Fax Order* ¶ 24.

permission of the recipient.”¹² Those same circumstances are present with respect to Medversant. Like others who have participated in this proceeding, Medversant questions the Commission’s authority to read the language of 47 U.S.C. § 227(b) to require opt out language for *solicited* faxes, and Medversant certainly did not “[understand] that [it] did, in fact, have to comply with the opt-out notice requirement for fax ads sent with prior express permission but nonetheless failed to do so.”¹³

Second, granting Medversant “a retroactive waiver would serve the public interest.”¹⁴ In the *Fax Order*, the Commission found this requirement satisfied because “a failure to comply with the rule – which . . . could be the result of reasonable confusion or misplaced confidence – could subject parties to potentially substantial damages.”¹⁵ The same is true here. Medversant is a defendant in putative class litigation in which the plaintiffs seek substantial statutory penalties.¹⁶

In sum, Medversant’s circumstances are substantially identical in all material respects to the many other companies that have already received retroactive waivers. The same waiver is thus warranted here.¹⁷ For all the reasons identified herein, Medversant respectfully requests that the Commission grant it a retroactive waiver of Section 64.1200(a)(4)(iv) of the Commission’s rules insofar as it may have sent or may send fax advertisements prior to April 30, 2015 without the opt-out notices required by that rule to recipients that had provided prior express invitation or

¹² *Id.* ¶¶ 24-25 (quoting *Junk Fax Order*, 21 FCC Rcd at 3810 n.154).

¹³ *Fax Order* ¶ 26.

¹⁴ *Id.* ¶ 27.

¹⁵ *Id.*

¹⁶ See n. 5, *supra*.

¹⁷ See *Fax Order* at ¶ 22 and nn.4 & 81.

permission.

Respectfully submitted,

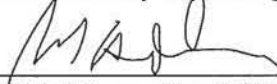
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Counsel for Medversant Technologies, LLC

Dated: January 7, 2015

DECLARATION OF MATTHEW HADDAD

I have reviewed the foregoing Petition for Waiver, and I hereby declare under penalty of perjury that the facts stated therein are true and correct to the best of my knowledge and belief.



Title: Chief Executive Officer

Date: December 31, 2014